IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BRIAN CRISP; JEFFREY MITCHELL and GARLAND WATKINS,	*	
Plaintiffs,	*	
v.	*	
VICTOR K. HILL and SHON HILL,	*	CIVIL ACTION FILE NO. 1:13-cv-3044-SCJ-AJB
Defendants.	*	

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I Introduction

This case truly is, as Mr. Atkins says, ***"sad."*** [ECF 68, p.1] But, it is ***"sad"*** not for the reason Mr. Atkins imagines—alleged "pride" and "paranoia" on the part of Plaintiffs Crisp, Mitchell and Watkins. No, the case is ***"sad"*** because, during 2013, Victor Hill succeeded in accomplishing what the Courts had restrained him from doing during 2005-2007—gratifying his insatiable appetite for retribution, retaliation, and revenge (by destroying the careers of highly dedicated and accomplished law enforcement officers, including Plaintiffs *Garland* Watkins, Brian Crisp, and Jeffrey Mitchell) Simply put, as shown by the evidence of record, whenever Victor Hill is placed in a position of power over his imagined "enemies", he is constitutionally incapable of controlling the inevitable "irresistible impulse" to exact his pound of flesh.[1]

Contrary to Hill's assertion that his retaliation "hammer" never dropped [ECF [ECF 68, p. 2], it dropped the very moment Hill took office on January 1, 2013—the very moment Hill regained the power to punish his perceived CCSO enemies (January 1, 2013)[2] Hill acted boldly--- in characteristic dramatic fashion: sending armed Sheriff's deputies to Watkins' home on New Year's Day to seize Watkins' take home County automobile, evicting Watkins from his office, seizing Watkins' keys, publicly demoting him, and assigning him to a position earmarked for failure from the beginning (in the newly formed Crime Suppression Unit ("CSU"). (PSMF Pars 351-350)

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[1]In accordance with Local Rule 56.1, Plaintiffs have submitted "Plaintiffs' Statement Of Additional Material Facts Which Present Genuine Issues For Trial" ("PSMF") [ECF 70, Pars. 1-148; ECF 71, Pars. 149-308; ECF 72, Par. 309-380]. As previously directed by the Court, all evidentiary citations appearing in this Brief will be to the paragraph(s) in the PSMF containing the citation to the deposition testimony or other evidence in the record.

[2]It is critical to note at the outset, as addressed and supported by competent evidence herein, Hill lacked the power to openly retaliate against (i.e., demote, suspend, fire) Watkins, Crisp and Mitchell from not later than February 2, 2005, until he took office again on January 1, 2013 (PSMF 68-70). In this regard, Hill was judicially enjoined by the Courts from taking any such actions beginning on February 2, 2005, until the conclusion of the *Massengale* litigation, when, as an element of the settlement, Watkins, Crisp, and Mitchell all transferred to the CCSO. [Id; Defendants' SMF, Par. 8 (ECF 68-1, Par. 8) After Hill was defeated by Kimbrough in the 2008 election, from January 1, 2009 until December 31, 2012, Hill obviously lacked any power to retaliate against the *Massengale* Plaintiffs until he once again took office on January 1, 2013. [ECF 68-1, Pars 12, 26]

Victor Hill's "retaliation hammer" continued "to drop" the very next day (January 2, 2013), when he punitively assigned 20 more people (including Brian Crisp and 16 other CCSO employees Hill viewed as "enemies" (including three other former *Massengale* Plaintiffs) to CSU. [PSMF Pars. 351-369] Hill's plot—to drive his enemies out of CCSO by way of these punitive assignments was largely successful. As detailed herein, at least 13 of the enemies Victor Hill assigned to CSU, including the Plaintiffs, resigned or retired rather than continuing to suffer that intolerable assignment [PSMF 368]. Contrary to Mr. Atkins' statement that "Other employees....made different choices...they went to work and did their jobs" [ECF 68, p.2], the other 10 CSU fatalities reasonably made precisely the same choice made by the Plaintiffs in this case: escape from utterly intolerable, unbearable work environment.

By March 6, Hill's "retaliation hammer" dropped even further, when Hill demoted Mitchell (from Major to Captain), and demoted Crisp (from Captain to Lieutenant). (PSMF 370-374) Quite clearly, the "retaliation hammer" *fell*, and it fell quickly.

For purposes of their summary judgment motion, for good reason, Victor and

Shon Hill, concede that being assigned "to CSU can be construed as materially adverse action." [ECF 68, p.7] Given that concession, and in light of the record evidence, the bottom line is this: a rational jury could (and almost certainly *would*) conclude that the actions complained of (CSU assignments, demotions, and constructive discharges) were motivated by unlawful retaliatory animus.[3] Victor and Shon Hill's motion should therefore be denied.

II **Summary Of Material Facts[4]**

Ignoring the fact that 10 other persons besides Watkins, Mitchell and Crisp resigned or retired rather than stay at CSU (9 of whom, unlike Watkins, Mitchell and Crisp, were never demoted), Victor Hill labels the Plaintiffs as "haunted by their past experiences with Victor Hill" [ECF 68, p.1], and accuses them of "paranoia";

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[3]Plaintiffs have previously abandoned their race discrimination claims, and hereby abandon any claims for "hostile work environment".

[4]Given the number of parties and the length of the pertinent time period, and countless material events and occurrences at issue in this case, it is simply impossible to address all of the pertinent facts in this Brief. As provided in Local Rule 56.1, Plaintiffs have submitted a "Statement of Material Facts Which Present Genuine Issues For Trial" (Paragraphs 1-380) [ECF 70, 71, 72] which sets forth in detail operative facts and identifies the underlying evidence. Similarly, Plaintiffs have submitted a "Response To Defendants' Statement of Material Facts (Paragraphs 1-190) [ECF 69], which details countless genuine disputes between the parties as to the facts, and the pertinent underlying evidence---Declarations (Watkins, Mitchell and Crisp [ECF 74, 76]); Depositions (Watkins, Mitchell, Crisp; Victor Hill; Shon Hill; Shawn Southerland; Samuel Smith [ECF 58-41, 58-36; 58-36; 58-35; 58-40; 58-37; 58-39; 58-38]; Plaintiffs Exhibits [ECF 77-1 to 20; ECF 77-1 to 20; ECF 78-1 to 20; ECF 79-1 to 20; ECF 79-1 to 20; ECF 80-1 to 20; ECF 81-1 to 20; ECF 82 1-20; ECF 83-1 to 27]; and Defendants' Exhibits [ECF 58-2 to 33]

"pride" "anger", "bitterness" and "distrust". He argues that they unreasonably did not give him a fair chance after he returned to office on January 1, 2013. Id at pp. 1-2.

Despite these accusations, Sheriff Hill carefully neglects to inform the Court of the previous course of conduct between Hill and the Plaintiffs (and their similarly situated co-Plaintiffs in the *Massenagle* litigation), or that at least 9 other CCSU employees conscripted by Hill to the CSU graveyard ultimately resigned or retired rather than stay there. Instead, Hill chooses to simply ignore those inconvenient facts. [Defendants' SMF ("DSMF")—ECF 58-1] Clearly, a thorough and complete knowledge and understanding of the prior course of conduct between the parties (and other persons similarly situated, i.e, *Massengale* Plaintiffs and other banished to CSU) is necessary for the Court to fairly consider: (1) the merits of Plaintiffs retaliation claims in this case; and (2) Hill's contention that *Plaintiffs did not give Hill a fair chance*, and that they should *blame themselves* for the abuse Hill heaped upon them. [ECF 68, p.5]

1/3/05-7/30/07 Retaliation Jihad Against Massengale Plaintiffs

Between January 3, 2005 and July 15, 2007, Victor Hill brutally fired, demoted and otherwise severely mistreated Plaintiffs Watkins, Mitchell and Crisp, (along with approximately 31 other persons). (PSMF, Pars. 20-27; 29a; 59-64; 69-78; 82-98; 102-102b; 105-125; 127-139; 140-173a; 177-184; 192-223; 225-289; 299-302; 304;

306; 308) These 34 persons had various traits in common: they were largely white; they had either openly supported the candidate defeated by Victor Hill in the prior election (or at a minimum, refused to support Hill in the campaign); or had familiar connections with persons who Hill viewed as his "enemies"; or in the case of one of the fired employees, had previously rebuked unwelcome sexual advances made by Hill (PSMF Pars. 5-7; 9-15; 22-23).

After the fired employees filed appeals pursuant to the County's Civil Service System, (PSMF 49), Hill arrogantly refused the County's request to reinstate the illegally fired employees (PSMF Pars. 50-51) The County thereafter filed a Petition for Mandamus seeking an Order requiring Hill to reinstate the illegally fired employees (PSMF 52), and the Court entered an Order the next day requiring Hill to reinstate the fired employees (PSMF 53-54). Hill initially refused to comply with that Order at all, (PSMF 61), and when he belatedly, finally, allowed them to return to work, demoted them and placed in the demeaning, dangerous positions for which they lacked training and necessary equipment, putting them at risk of bodily harm (PSMF 62-64). This state of affairs persisted until Hill was held in Contempt of Court and ordered, on pain of a substantial daily fine, to actually reinstate the fired employees to their former positions. (PSMF 67)

Hill's unprecedented misconduct was the subject of a avalanche of media coverage, both local and national. (PSMF 30). As the focus of the pandemonium, Hill narcissistically called and participated in press conferences in which he labeled the Plaintiffs' claims as "frivolous". (SMF 30, 139, 145)

Along the way, the fired employees filed race discrimination charges with the EEOC. (PSMF, Pars. 55-56). They also filed lawsuits in the Northern District of Georgia, alleging claims race discrimination and political retaliation—*Massengale et al v Hill et al,* Civil Action File No. 1:05-cv-0183 (filed January 10, 2005); *Massengale et al v Hill et al*, Civil Action File No. 1:05-CV-0189 (filed on January 22, 2005, with a Second Amended Complaint filed on April 12, 2005 (PSMF, Pars. 1; 56-58); *Bartlett et al v. Hill et al*, Civil Action File No. 1:06-cv-0211-TWT (fled on January31, 2006); *Daniel et al v Hill et al,* Civil Action File No 1:06-cv-0223 (filed on February 1, 2006)

After belatedly reinstating the illegally fired employees, Hill embarked on an unprecedented, furious Jihad of retaliation against the Plaintiffs and the other similarly situated *Massengale* Plaintiffs, (PSMF 59-64; 67-298). The post-firing retaliation was visited directly upon all of the *Massengale* Plaintiffs by way of Hill's imposition of a brazen and brutal hostile work environment which sought, among other things, to castrate the senior officers who were the leaders of the *Massengale* group (Id; PSMF 290-298). It also included specific additional punitive acts taken against Plaintiffs Watkins (PSMF 71-83)(bogus write ups; bogus assignments; bogus performance evaluation; confrontational, hostile interrogations, etc); Crisp (PSMF, 69(a)(demotion from Lieutenant to Sergeant, and Mitchell (PSMF, 69b) (demotion from Captain to Lieutenant).

Notably, along the way, Hill made numerous comments evidencing his intolerance of criticism, his willingness to taunt his employees with threats should they speak out against him, and his willingness to defy the authority of Courts considering claims against him. (PSMF 82g)(telling Plaintiff Watkins, "I will not tolerate any of you publicly criticizing anything that goes on in the Sheriff's Office and that includes your opinions about the day you were fired"); (PSMF 82f)(telling Plaintiff Watkins)("the Sheriff's Office rules supercede the Civil Service Rules); (PSMF 137)(telling *Massengale* Plaintiff Captain Angelo Daniel, "You are never to question any decision I make. I better not ever hear of you questioning my decision in the future"); (PSMF 139)(telling Cpt. Daniel, "I am the Sheriff and you're nothing but a Captain and you better not come to my office with that bullshit again that you put forth a good faith effort"); (PSMF 232) ("The U.S. Constitution does not apply to the Sheriff's Office"); (PSMF 24)(attempting to taunt Major Barnett into a physical altercation); (PSMF 123)("I am not afraid of any lawsuit. I don't care what any Judge, Court or Commissioners or Attorney say about what I do. I am going to run this department the way I want to"); (PSMF 127)("By now ya'll know I don't care what no Judge says, no Court order or what Grandpa says. I pay as much attention to those Judges as I do to that dog in my neighbor's yard."); (PSMF 133)("If any Deputy is ordered out of a Courtroom by a Judge, disregard the Judge's Order");

The net effect of Hill's first regime of retaliation was dramatic and palpable:

> Sheriff Hill's retaliatory and punitive actions taken against the Massengale Plaintiffs resulted in an egregiously hostile and intolerable work environment. Hill's actions caused many Plaintiffs, including Major Massengale, Major Maddox, Captain Daniel, Captain Glaze, Lt. Ward, and others, to take extended periods of sick leave, simply to get away from the abuse. Two Captains, Mike Collins (Plaintiff) and Charlie Hall (non-plaintiff) involuntarily retired in order to escape the perpetual harassment and intimidation. **[PSMF 299]**
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> As a result of Hill's almost unfathomable Jihad of retaliation, the physical and mental well-being, as well as the very spirit of the Massengale Plaintiffs had been so severely deteriorated as of March 26, 2009, that each day they reported for duty in fear and dread of being summoned to the Sheriff's Office to be attacked, ridiculed, insulted, threatened, and publicly humiliated. [**PSMF 300]**
>
> The egregiously hostile work environment Hill created was greatly exacerbated by Hill's Gestapo-like, confrontational interrogations, threats, insults, taunting, as well as his directives to the Massengale Plaintiffs that they lie to Judges, disobey their orders, and create false official reports.
> **[PSMF 301]**

> Many of the Massengale Plaintiffs were, as of March 29, 2006, unsure whether they could continue to work in the CCSO due to Sheriff Hill's abuse and intimidation. **[PSMF 302]**

Plaintiffs' allegations in this lawsuit regarding Hill's Jihad of retaliation are not a figment of their imaginations. Even former Defendant Clayton County itself recognized in 2008 and admitted (in 2008) the nature and severity of Hill's regime of retaliation and abuse against CCSO employees. Indeed in a suit filed by a non-Massengale Plaintiff, Clayton County itself asserted a legal claim (Verified Cross Claim) against Hill observing that, among other things, Hill's conduct had severely and deleteriously affected the ability of CCSO employees to carry out their law enforcement duties

> Sheriff's Office employees have been and continue to be subjected to a work environment full of discrimination, arbitrary employment actions, retaliatory employment actions, political tension, hostility, physical intimidation, and fear of retaliation. **[PSMF 304(12)]**
>
> the 67 grievances filed by Sheriff's Office employees during the past 9 months evidence a pattern and practice of many improper and/or illegal employment practices by the Sheriff, including the following: unjustified promotion of non-qualified employees to high ranking positions (cronyism.); retaliatory reassignment, demotion, and

> termination; unlawful discrimination of the bases of race and age; arbitrary discipline and demotion; hostile work environment; and retaliation against and harassment of employees for filing complaints with the Equal Employment Opportunity Commission. **[PSMF 304(22)**
>
> Upon information and belief, ***the work environment created by the Sheriff's improper, unlawful, and/or unethical employment policies and actions detrimentally affects the Sheriff's Office employees' abilities to perform their duties and distracts from the performance of their law enforcement functions.*** **[PSMF 304(21)](emphasis added)**

Later, in seeking the appointment of a Monitor to protect CCSO employees, the County characterized the *Massengale* litigation as follows:

> the fired employees brought federal claims for damages, resulting in over 750 filings in one case alone. [cit***] When ordered to reinstate the employees, Sheriff Hill continued to retaliate against them, spawning even more lawsuits.*** See, e.g., Larry Bartlett v. Clayton County, et al., N.D. Ga., Civil Action File No. 1:06-CV-211-TWT; Leontyne Daniel, et al. v. Victor Hill, et al.; N.D.Ga., Civil Action File No. 1:06-CV-223-TWT; Hill v. Hill; N.D.Ga., Civil Action File No. 1:05-CV-271-CAM. **[PSMF 306]**(emphasis added)

Retaliation Jihad-II: Third Parties

Hill's irresistible impulse to retaliate against perceived enemies was not limited to CCSO employees. To the contrary, the day after Hill fired the *Massengale* Plaintiffs, he ordered the jailing of former Sheriff Tuggle (Hill's opponent in the recent election)—an enthusiastic Tuggle campaign supporter, who had left a voice mail complaining about the illegal firings. [PSMF 31-48] After the criminal charges Hill manufactured against Tuggle were dismissed, Tuggle secured a good lawyer (Mr. Atkins), who filed suit against Hill alleging retaliatory false arrest. Id. The case proceeded to trial, and Mr. Atkins secured a resounding victory of Sheriff Hill, with the jury awarding Tuggle ($250,000 compensatory damages; $225,000 punitive damages). Later, Judge Evans added another $190,000 as attorney's fees and costs. Id. After being voted out of office in 2008, and leaving office on January 1, 2008, Hill filed for bankruptcy on January 9, 2009. Id After Mr. Atkins garnished Hill's County wages on January 15, 2013 (for the still unpaid *Tuggle* judgment), Mr. Atkins negotiated a settlement of the still outstanding *Tuggle* judgment, which included using $300,000 of the funds budgeted to CCSO by the County. Id.

Hill also used the power of his office to retaliate against other third parties who "crossed him". In this regard, after Charley Griswell, then a member of the Clayton County Board of Commissioners, and other members of the Board took certain official actions with which Hill disagreed, Hill ordered that a road block be erected directly in front of a business owned by Griswell, for the purpose retaliating against and harassing Griswell. (PSMF 290-292). Similarly, after the local Newspaper (the Clayton Daily News) printed articles regarding Hill's shenanigans which Hill did not like, he barred Daily News reporters from attending his not infrequent Press Conferences. **[PSMF 292-294]**

Last but not least, when, in the midst of Hill's *Massengale* related shenanigans, the Board of Commissioners adopted, pursuant to its authority under the Civil Service system mandatory provisions regarding promotions with the CCSO, Hill responded with his normal "thumb in your eye" rashness and bravado (PSMF 295-298), ordering all persons in the CCSO to disregard and disobey the new Rules. Id

Victor Hill Defeated In 2008 Election Due To Massenagle Litigation

Not surprising, Hill was defeated in his bid for reelection in 2008. One of the likely reasons for his defeat was his highly publicized misconduct directed at *Massengale* Plaintiffs from January 3, 2005 until July of 2007, which was effectively exploited by Kimbrough. (Watkins Dec., Pars. 7-8)

Watkins, Mitchell and Crisp Return To CCSO

After Kimbrough took office, i.e, having no reason to fear further retaliation from Hill, Watkins, Mitchell and Crisp returned to the CCSO (after an 18 month transfer to the Clayton County Police Department which was engineered to protect them from additional retaliation by Hill). (PSMF 313) During Kimbrough's administration, Watkins was named Chief Deputy; Mitchell was promoted to Major;

and Crisp was promoted to Captain. Another person promoted by Kimbrough was Ronald Gardiner (to Captain). (Watkins Dec., Par. 10) Although Mitchell served as a Major for more than three years prior to January 1, 2013, while Gardiner and Crisp both served less than a year as Captains prior to January 1, 2013. (PSMF 315)

Criminal (Public Corruption) Investigation Regarding Hill

Beginning in 2011, at the direction of the Clayton County District Attorney, the CCSO, Sheriff Kimbrough, undertook an investigation regarding alleged criminal conduct on the part of Victor Hill while serving as Sheriff from 2005-2009. [PSMF 317] Ultimately, in January of 2012, while engaged in the 2012 campaign for Sheriff against Kimbrough, Hill was indicted on 37 Counts of public corruption. [PSMF 323-324] He was then immediately placed under arrest and booked, with the assistance of CCSO Deputy Clarence Cox. [PSMF 323] According to many folks, Hill was "getting what he deserved" [PSMF 325] And, numerous people, including CCSO employees, were "shocked" when Hill was acquitted. (Southerland, 79)

Hill Takes Office January 1, 2013: Retaliation Jihad-III
Victor Hill Picks Up Right Where He Left Off In 2007

Under indictment when he assumed office on January 1, 2013, Hill immediately began exacting his revenge on persons over whom he possessed stateconferred power, including, quite possibly, intimidating potential witnesses against him in his upcoming criminal trial. On day one he demoted Watkins (a potential witness in the upcoming criminal trial) from the position of Chief Deputy, and showing his swagger, sending armed deputies to Watkins' residence to confiscate his take home vehicle; took away his keys; evicted him from his office and ***assigned him to a new unit, "CSU".*** Hill tries to explain away sending the armed deputies to Watkins' home on the pretext that the door to Watkins' office was locked, when in fact the door was not locked, and was open when Watkins arrived at the office. (PSMF 341-349)

CSU Assignments: The New Victor Hill "Hit List"

Remarkably similar to Hills' 1/3/05 dispatching of 27 deputies, the very next day, February 2, 2013, Hill continued his rampage, banishing 20 additional persons to CSU. A few days later he banished another 4 persons to CSU. Of those twenty-five initial assignments to CSU, 22 were given to persons perceived by Hill as enemies, sharing one or more the following characteristics: (a) former *Massengale* Plaintiffs (Watkins, Crisp, Cash and S.W. Smith); (b) supporters of rival political candidates: (Watkins, Crisp, Cash; S.W. Smith; Fanning; Harrison; Norton; Orr; Dunbar; Justin Mitchell; Black; Cox; Ford; Skeen; Rotella and Vasquez; (c) participated in criminal investigation into Hill public corruption investigation/Hill arrest (Watkins; Crisp; Fanning; Harrison; Norton; Waites; Cox; Black; Hogan; Dunbar;[5] (d) fired in prior Hill administration (Hitchcock–successfully sued to regain employment), Anderson; Thomas); (e) revealed 2008 misconduct of CCSO employee (Beatrice Powell) who was paid as though she was on duty at the Jail, when in fact she was traveling on a leisure trip with Hill after he was defeated by Kimbrough in the 2008 primary; (f) former Kimbrough drivers/confidantes (Black; Justin Mitchell; Hogan) **[PSMF 352-355.]**

CSU Assignments: Hill's Graveyard For Victor Hill Enemies

Each of the three Plaintiffs in this case were at some point assigned to CSU. (PSMF 360-361; 369) Although Hill claims that he envisioned CSU as an "elite" and very important unit in his new administration, when it came time to explain its mission/objective to Watkins (the "Commander"), neither Victor nor Shon Hill even showed up for te meeting. (PSMJ 357). Remarkably, "Commander" Watkins was never consulted nor permitted to have input on the structure or personnel composition of the Unit. (PSMF 361)

The composition of the unit was remarkable for its departure from historic CCSO practices regarding Chain of Command and scope of supervision: 13

[5]Hill knew that Brian Crisp participated in the investigation. [PSMF 319-320] Hill also believed that Watkins participated in the criminal investigation. [PSMF 320]

Superior Officers (Chief Deputy Watkins; 4 Captains, 4 Lieutenants, and 3 Sergeants) "supervised ' 8 Deputies. In contrast, normal practice was for Superior Officers to "supervise" at least 5 subordinates (a 1 to 5 ratio). Not so with CSU, where there were ***1.62 Superior Officers for each Deputy***. See, Plaintiffs' Responses to Defendants' Statement of Undisputed Material Facts, No. 44; Defendant's Exhibit "1", pp. 3-7; Southerland, 35-30. Even S. Hill admitted that this arrangement "was not the most efficient. (S Hill, 49).

CSU was headed by a "Commander" (initially Watkins), and divided into four "teams". Each "team" included a Captain, a Lieutenant, a Sergeant, and two Deputies. (Defendants' Exhibit "12") (ECF 58-12) Smith verified the inefficiency of such a top heavy structure, observing that it simply was not necessary to have a Captain personally supervising the Lieutenant, Sergeant and Deputy assigned to each "Team"----all of whom performed precisely the same "stake out" functions (Smith 160)(Plaintiffs' Exhibit "120") . See, Plaintiffs' Responses to Defendants' Statement of Undisputed Material Facts, No. 44.

Ultimately, Watkins was the "Commander" of the unit in name only, with Victor and Shon Hill sending him daily emails about which convenience store or apartment building they wanted to be observed by the 12 CCSO Captains, Lieutenants, Sergeants (and 8 CCSO deputies) he assigned to CSU---all of whom were required to perform precisely the same duties (sitting in their cars at apartment complexes, neighborhoods, private residences, and convenience stores. [PSMF 357-363]; (Watkins Dec., Pars. 21-31) (Plaintiffs' Exhibit "120", pp. 7-8)

CSU was plagued by an incompetent (or clever) lack of communication from S & V. Hill, and a lack of manpower and automobile resources necessary to perform the entry level task demanded by them. Id

Assignments to CSU meant this: working shifts that continually changed, involved odd work schedules (days/hours), entailing 12 hour shifts, causing great disruption with the personal and family lives of those assigned there. CSU Supervisors, in distinction to other CCSO Supervisors, were not permitted the use of take home County vehicles. And, the nature of the work performed by the Captains, Lieutenants, and Sergeants assigned there (of which there were (12) varied not one whit from the work performed by the entry level Deputies (of which there were 8): mostly sitting in parked cars in parking lots at locations selected by V and S Hill on an ad hoc basis, with little or no background information. [PSMF 360]

On February 17, 2013, less than 10 days after CSU became operational, S. Hill sent Watkins an email expressing "issues" with the operation of CSU. [PSMF 362-365] The email was full of outright falsehoods and distortions, pretextually seeking to make it appear as though Watkins had been given a fair opportunity manage CSU and had failed to do so. Id Two weeks later, Watkins was demoted yet again, this time to a "Team leader" position, placed under the supervision of a lower ranking deputy (Samuel Smith). [PSMF 366] When Watkins wrote to Shon and Victor Hill to inquire concerning his status, they did not ever show the courtesy of a response. [PSMF 366] A short time later, Watkins was forced to report to yet another lower ranking Deputy (Bohrer) [PSMF 367]

CSU Casualties

In light of the foregoing work conditions, it is not surprising that nearly many, if not most, of the persons initially assigned to CSU have now resigned or retired. In this regard, each of the three Plaintiffs resigned. (PSMF 368). But, they clearly were not alone; the following officers also resigned or retired rather than staying in CSU: Captain/Lieutenant Gardiner; Lieutenant J. Smith; Lieutenant D. Harrison; Lieutenant K. Fanning; Sgt. J. Waites; Sgt. S. Norton; Sgt. R. Hitchcock; D/S C. Cox; D/S T. Dunbar; D/S S. Rotella. [PSMF 368] Congratulations, Victor Hill, your clever plan actually worked.

III **Summary Judgment Standard**

Summary judgment is appropriate only where there is a total absence of genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. "The district court should resolve all reasonable doubts about the facts in favor of the non-movant, and draw all justifiable inferences his [or her] favor." U.S. v. Four Parcels of Real Property, 941 F.2d 1428, 1437 (11th Cir. 1991) (en banc).[6] In making the summary judgment determination, the Court is required to "consider the whole entire record, but [must] disregard all evidence favorable to the moving party that the jury is not required to believe." Reeves v. Sanderson Plumbing Tools, 530 U.S. 133, 120 S.Ct. 2097, 2110, 147 L.Ed.2d 105 (2000); Cleveland v. Home Shopping Network, 369 F.3d 1189 (11th Cir. 2004) (same). Where more than one possible inference may be drawn from an uncontested set of facts, summary judgment may properly be denied: "Summary judgment may be inappropriate when the parties agree on the basic facts, but disagree on the proper inferences to be drawn from such facts." Holley v. Seminole County School Dist., 755 F.2d 1492, 1504 (11th Cir. 1985).

Intent is a question of *fact*. Anderson v. City of Bessemer City, 470 U.S. 564, 105 S.Ct. 1504, 1511 84 L.Ed.2d 518 (1985). "Pretext", too, is a question of fact. Rollins v. TechSouth, Inc., 833 F.2d 1525, 1529 (11th Cir. 1987); Morrison v.

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[6] "[T]he function of the court on a summary judgment motion is to determine whether the proffered admissible evidence shows circumstances that would be sufficient to permit a rational finder of fact to infer a discriminatory motive .... It is not the province of the summary judgment court itself to decide what inferences should be drawn." Jameson v. Arrow Co. 75 F.3d 1528, 1531 n.1 (11th Cir.1996), quoting, Cronin v. Aetna Life Ins. Co., 46 F.3d 196, 203–04 (2d Cir.1995)

Booth, 763 F.2d 136 (11th Cir. 1985). In the end, "the plaintiff will always survive summary judgment if he presents circumstantial evidence that creates a triable issue concerning the employer's discriminatory intent." Turner v. Inzer, 521 Fed.Appx. 762 (11th Cir. 2013), quoting, Smith v. Lockheed–Martin Corp., 644 F.3d 1321, 1328 (11th Cir.2011). "A triable issue of fact exists if the record, viewed in a light most favorable to the plaintiff, presents a convincing mosaic of circumstantial evidence that would allow a jury to infer intentional discrimination by the decisionmaker." Id. The "mosaic" painted by the Plaintiffs more than satisfies this standard.

IV Argument And Citations of Authority

Plaintiffs allege that they were demoted, assigned to CSU, and ultimately constructively discharged in retaliation for: a) having protested against unlawful race discrimination; b) having engaged in political ***speech*** protected by the First Amendment; and c) having participated in the criminal investigation which led to the 37 Count indictment against Victor Hill. In addition to monetary damages, Plaintiffs have requested prospective injunctive relief in the form of reinstatement. [ECF 1, p.24]

Defendants' central argument on summary judgment is that there is insufficient evidence of unlawful intent. [ECF 68, pp. 9-16 (Title VII/Sec. 1981 claims); p.18 (Georgia Whistleblower claims); pp. 23-24 (Free Speech Claim) The assertions, entirely devoid of merit, are addressed below.

A A Rational Jury Could Easily Conclude That Plaintiffs' Demotions, Assignments To CSU, And Constructive Discharges Were Motivated At Least In Part For Protesting Against Unlawful Discrimination—In Violation of Title VII and 42 U.S.C. §1981

Title VII (42 U.S.C. Section 2000e(3)(a)), and 42 U.S.C. §1981 both prohibit retaliation against persons who complain that they have been the victims of racial discrimination. Burlington N. & Santa Fe Ry Co v. White, 548 U.S. 53, 126 S.Ct. 2405 (2006); CBOCS West, Inc, 128 S.Ct. 1951, 1958 (2008). Although the causation standard for imposing Title VII retaliation liability is "but for" causation, the causation standard applicable to §1981 retaliation claims is the "motivating factor" standard,[7] which is considered more lenient. "A motivating factor does not

[7] See, University of Texas v. Nassar, 133 S.Ct. 2517 (2013) ("but for" causation standard applies to Title VII retaliation claims, but strongly suggesting that retaliation claims brought under §1981 would be properly analyzed under the "motivating factor" standard. 133 S.Ct at 2530. See, Welch v. Eli Lilly, 2013 WL 4413323 (S.D. In. 2013)("The *Nassar* Court specifically distinguished §1981's broad-based prohibition of discrimination that encompassed retaliation from Title VII's "precise, complex, and exhaustive" treatment, and refused to use "the default rules that apply only when Congress writes a broad and undifferentiated statute."*Id.* at 2530–31. This implies that the standard of proof for a retaliation claim under §1981 should be analyzed under the pre-*Nassar,* motivating factor standard first enunciated in Price Waterhouse v. Hopkins) In any event, the "motivating factor" causation standard continues to apply to Sec. 1981 retaliation claims in this circuit. Mabra v. United Food & Commercial Workers, 176 F.3 1357 (11th Cir. 1999) ("Enacted as part of the Civil Rights Act of 1991 ("1991 Act"), the mixed-motive amendments specifically add two provisions to the text of Title VII; they make no amendment or addition to § 1981...In contrast, the portion of the 1991 Act amending §1981 by adding two new subsections to the text of that statute makes no mention of any change in the mixed-motive analysis in §1981 cases. *Id.* at 1071-72.-Thus, the 1991 mixed-motive amendments

mean that it had to be the sole cause of the employment action. Instead, "it is one of the factors that 'a truthful employer would list if asked for the reasons for its decision. "[Retaliation] is a motivating factor if the defendant relied on, took into account, considered, or conditioned its decision on that consideration." Coffman v. Chugach Support Servs., 411 F.3d 1231, 1238 (11th Cir. 2005)

Generally, retaliation claims are analyzed via a specially tailored version of the analytical framework initially established in McDonnell-Douglas Corp v. Green, 411 U.S. 792; 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). **Typically**, the Plaintiff must make out a "prima facie case" of retaliation. Goldsmith v Bagby Elevator, 513 F.3d 1261, 1277 (11th Cir. 2008), by showing the following; (1) he engaged in protected conduct; (2) he suffered an adverse action, and (3) there was some causal connection between the two events. Id. [8] These specific points need not be shown

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to Title VII do not apply to § 1981 claims)

[8]Though sometimes these elements of a prima facie case labeled "elements of the claim", that is an incorrect statement. The elements of a prima facie case are not 'elements of the claim." See, Ledbetter v. Goodyear Tire & Rubber Co, 127 S.Ct. 2162, 2171, 167 L.Ed.2d 982 (2007) ("A [retaliation] claim comprises two elements: an employment practice, and discriminatory intent."). See also, Wright v. Southland Corp., 187 F.3d 1287, 1292 (11th Cir. 1999)("that the facts required to establish the McDonnell Douglas presumption are neither necessary nor sufficient to establish discrimination under the traditional framework. They are not necessary because a plaintiff may be able to prove discrimination despite the fact that he was unqualified for the position, or that he did not differ from the person selected in regard to a protected personal characteristic."

in every case; to the contrary, the plaintiff succeeds in making out a prima facie case of discrimination where [s]he:

> show[s] actions taken by the employer from which one can infer, ***if such actions remain unexplained***, that it is more likely than not that such actions were 'based on a discriminatory criterion illegal under the Act.

Furnco Construction Co. v Waters, 438 U.S. 567, 576, 98 S.Ct. 2943, 2949, 57 L.Ed.2d 957 (1978). See also, Walker v. NationsBank of Florida, 53 F.3d 1548, 1556 n. 12 (11th Cir.1995)("Whether a prima facie case has been established is a fact specific inquiry: Would an ordinary person reasonably infer discrimination ***if the facts presented remained unrebutted?).***

Once the Plaintiff succeeds, the employer is required to come forward, through admissible evidence, with a "legitimate, non-discriminatory reason" for its action. Texas Dept. of Comm. Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). St. Mary's Honor Center v. Hicks, U.S. , 113 S. Ct. 2742, 125 L. Ed. 2d 407 (1993); Reeves v. Sanderson Plumbing, 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). Thereafter, the Plaintiff may prevail by discrediting the employer's explanation as "unworthy of credence." Burdine, supra; St. Mary's, supra. This may be accomplished by pointing out "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proferred legitimate reasons for its actions that a reasonable fact finder could find all of those reasons unworthy of credence." Coombs v. Plantation Planters, 106 F.3d 1519, 1538 (11th Cir .1997)

The generally applicable elements of a Title VII/Section 1981 retaliation prima facie case are as follows: the plaintiff: 1) engaged in protected activity;[9] 2) suffered and adverse action; and 3) the two events were causally connected. Goldsmith, 513 F.3d at 1277. Sheriff Hill admits the "protected activity" prong . [ECF 68, p.4] Sheriff Hill also concedes, for purposes of this motion, that being transferred to CSU constitutes an "adverse action" [ECF 68, p.7][10]

Hill's lone argument as to Plaintiffs' Title VII/Section 1981 retaliation claims pressed by Hill is that there is no evidence of a "causal connection" between their protests against unlawful discrimination in the context of the *Massengale* litigation. In this regard, they argue that Plaintiffs rely on two facts to prove causation: (1) two other *Massengale* Plaintiffs were transfered to CSU; and CSU"s initial structure was 'top heavy.'" [ECF 68, p. 9] This assertion is utterly preposterous. Plaintiffs have introduced an avalanche of admissible evidence proving Hill's facially retaliatory acts against them, as well as Hill's facially retaliatory acts perpetrated against other similarly situated persons, i.e., Plaintiffs in the *Massengale* litigation.

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[9]Sheriff Hill states: "Defendants agree that Plaintiffs engaged in...protected activity..Plaintiffs filed a discrimination lawsuit against Sheriff Hill in 2005." (ECF 68, p.4). That lawsuit, of course, was the *Massengale* lawsuit, which concluded in ***July of 2007.***

[10]Because the demotions of Mitchell (from Major to Captain) and Crisp (from Captain to Lieutenant) entailed considerable reductions in their pay, Hill wisely does not argue that the demotions did not constitute "adverse actions". [ECF 58-30, p.6] (demotion resulted in nearly $9,000 salary reduction for Mitchell); [ECF 58-24, p.2](demotion resulted in more than $7,000 reduction for Crisp) The severe reductions in pay associated with these demotions render them adverse actions as a matter of law. See, Burlington N. & Santa Fe Ry Co v. White, supra, holding that both drastic change in job duties subsequently rectified 37 day suspension without pay are "adverse actions". See also, "adverse employment action includes termination, failure to hire, and demotion." Crawford v. Carroll, 529 F.3d 961, 970 (11th Cir. 2008)

The Eleventh Circuit has repeatedly addressed the "causal connection" prong of the retaliation inquiry. It is satisfied if the protected activity and the adverse action are "not wholly unrelated." Clover v Total System Services, 176 F.3d 1346, 1354 (11th Cir. 1999). In regards to the "not wholly unrelated" standard, "At a minimum, a plaintiff must generally establish that the employer was actually aware of the expression at the time it took the adverse action." Goldsmith v. City of Atmore, 996 F.2d 1155, 1163 (11th Cir. 1993) Though the causal connection requirement can be satisfied by a showing that the adverse action followed soon on the heels of the protected activity, this is clearly not the only means by which it can be satisfied. Instead even where a close temporal proximity is lacking, the causal connection requirement can be satisfied "where the Plaintiff presents other evidence tending to show causation." Baroudi v. Secretary of Veterans Affairs, 2015 WL 1475586 (11th

Cir. 2015), citing, Wascura v. City of S. Miami, 257 F.3d 1238, 1248 (11th Cir.2001)

Regarding temporal proximity, Sheriff Hill, without discussion or analysis, simply proclaims that "There is no temporal proximity here given the eight year gap between Plaintiffs' protected activity and their re-assignment." [ECF 68, pp. 8-9] Unfortunately for Hill, the time line is not quite so simple.

Plaintiffs engaged protected activity beginning when they filed the *Massengale* litigation in 2005, and they engaged in protected activity every day they ***participated in*** that litigation (from early 2005 until that case was settled—July 30, 2007). [ECF 1, Par. 56; PSMF 307] During that time, Hill was constrained by various Court Orders from taking specified adverse actions against the *Massengale* Plaintiffs without advance Court approval. [PSMF 68][11] After *Massentgale* settled, all three Plaintiffs transferred to the Clayton County Police Department, where they were beyond Hill's power to punish/retaliate against them for the remainder of Hill's

[11] As detailed at length in Plaintiffs' Statement Of Material Facts, the various Court Orders in place during the *Massengale* litigation notwithstanding, Hill in fact continued to engage a dramatic, unending series of retaliatory acts against the Plaintiffs such as bogus job assignments, bogus write-ups, constant threats, Gestapo-like interrogations and confrontations; personal insults, etc. etc. [PSMF, Pars. 20-27; 29a; 59-64; 69-78; 82-98; 102-102b; 105-125; 127-139; 140-173a; 177-184; 192-223; 225-289; 299-302; 304; 306; 308]

initial term (12/31/12). (Watkins, 11); (Crisp, 7-8); (Mitchell, 11-12)[12] For the next four years, Hill was a private citizen—still devoid of power to punish/retaliate against the Plaintiffs.

At the first possible second---when Hill reassumed office on January 1, 2013—Hill's "retaliation hammer dropped"---he immediately demoted Watkins from the position of Chief Deputy and consigned him to CSU. The next day (January 2, 2013), he assigned Crisp to CSU. One month later (February 1, 2013), he demoted Watkins a second time (to "Team Leader"). Two months later (March 6, 2013), he demoted Crisp and Mitchell. Understood in light of the unique circumstances presented, Plaintiffs have established a sufficiently short temporal proximity of their protected conduct (i.e, ***participation*** in the *Massengale* litigation) to the adverse actions in question. This is so for the simple reason that Victor Hill lacked any power to retaliate against the Plaintiffs from July 30, 2007 (the date Plaintiffs' protected ***participation*** in the *Massengale* litigation effectively ended) until Hill reassumed office on January 1, 2013.

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[12] For reasons that are not clear, Defendants' SMF No. 8 asserts "As a part of the settlement reached in *Massengale*, Crisp, Mitchell and Watkins all transferred to the Clayton County Police Department sometime in 2006".

In Tatroe v. Cobb County, 2006 WL 559437 (N.D. Ga. 2006), Judge Duffey confronted a similar situation: the Plaintiff alleged that she had been retaliated against for having spoke out on matters of public concern. Some of the employment actions about which she complained, however, did not occur until approximately one year after she engaged in the protected speech. As here, the employer argued that such a temporal gap barred any conclusion that there was a causal connection between the two. Judge Duffey, however, rejected that contention, noting that "Gaps of time, standing alone, do not preclude a Plaintiff from producing enough evidence for a reasonable jury to conclude that protected speech was a substantial factor in the employer's decision."[13] Equally important, Judge Duffey explicitly took note that the person who ultimately took the challenged action was overseas on military duty—i.e, unable to take any punitive action against the plaintiff until a year later when he quickly took the challenged actions:

> ...the timeline is not as straight-forward as Defendants propose. Plaintiff [engaged in the protected speech] on January, 2003. Wheeler, the alleged primary decisionmaker, did not return from Afghanistan until August of 2003. If Wheeler did not learn of the letter's contents until he returned to the Bureau, then arguably August 2003 represents the more appropriate time from

[13] Judge Duffey cited to the decision in Stanley v. City of Dalton, 219 F.3d 1280, 1291-92 (11th Cir.2000), which held that a four year gap between protected speech and adverse action did not preclude Plaintiff from establishing causastion)

> which to measure the time between Plaintiff's protected speech and the adverse employment decisions at issue.

Tatroe, *16, n.9. Clearly, the "temporal relationship" clock stops where, as here, the employer lacks power to commit retaliatory acts. One day, two day, and two month time spans between the protected activity and the adverse action plainly satisfies the "causal connection" requirement applicable to Plaintiffs' Title VII/§1981 retaliation claims.

Apart from temporal proximity, the Eleventh Circuit has not identified the quantum or character of evidence necessary to satisfy the "causal connection" Fortunately, a closely related issue has repeatedly been addressed in the context of free speech retaliation claims, where Plaintiffs are required to make a threshold showing that the speech was a "motivating factor in the adverse" in the challenged decision. Stanley, supra, 219 F.3d 1291. In that context, it has been observed that "It is neither possible nor desirable to fashion a single for determining when an employee has met this initial burden." Id; Beckwith v City of Daytona, 58 F.3d 1554, 1564 (11th Cir. 1994). Nonetheless, the burden "is not a heavy one." Id.

In Stanley, the Court identified a number of factors which should be taken into account in assessing whether the employee has satisfied his initial burden regarding the causal connection employment: (1) the temporal proximity of the adverse action and the protected speech; (2) whether any of the asserted reasons are pretextual; (3) any comments made or actions taken by the employer indicating that the adverse employment action was related to the protected speech; (4) whether the asserted reason for the adverse action ever varied; (5) and circumstantial evidence of causation, including facts as to who initiated any internal investigation or termination proceedings, whether there was any evidence of hostility to the speech in question, or whether the employer had a motive to retaliate. 219 F.3d at 1291 n.20. Plaintiffs have produced precisely these types of evidence in this proceeding.

First, during the course of his initial term as Sheriff, Hill made numerous statements to the effect that he would tolerate no criticism, and further, that the CCSO "no criticism" rule trumped the U.S. Constitution. [PSMF 82f, 82g, 109, 123,127, 137, and 233] Second, Plaintiffs have adduced substantial evidence of mistreatment inflicted upon them and other persons similarly situated by Hill during his first term, which evidence is plainly admissible to show the course of dealings between the parties. McDonnell Douglas v Green, supra, 411 U.S. at 804 ("other evidence that may be relevant to a showing of pretext includes the facts as to [the employer's] treatment of the [Plaintiff] during his prior term of employment.".

The probity of this evidence is not limited to the actions Hill's took against the three plaintiffs during the pendency of the *Massengale* litigation; instead, it extends to the punitive/harassing acts Hill took against the other similarly situated *Massengale* Plaintiffs. Goldsmith v. Bagby Elevator, supra, 513 F.3d at 1286-87 ("The 'me-too' evidence was admissible under Rule 404(b) [of the Federal Rules of Evidence] to prove the intent of [the employer] to discriminate and retaliate...There was also evidence that was probative of the intent of [the employer] to retaliate against any black employee who complained about racial slurs..the 'me too' evidence was admissible...because it was probative of the intent of the [employer] to...retaliate."

Plaintiffs have plainly made out a prima facie case of Title VII/§1981 retaliation. Thus, the remaining issues as to those claims are: (1) whether Defendants successfully rebutted the prima face case; and (2) if so, whether Plaintiffs' produced sufficient evidence of pretext. Although the answer to question 1 is debatable, the answer to question 2 is plainly YES.

S. Hill claims that Crisp was demoted because he had a "terrible attitude". [Defendants' SMF No 189] Yet, when asked to identify any performance deficiencies, S. Hill could not recount a single one. (S. Hill, 107)("I don't recall the performance"). Instead, the only thing S. Hill could dream up regarding Crisp was the contention that Crisp was "disengaged" during a meeting over which S. Hill presided. [S. Hill 107] S. Hill's "disengaged" contention is directly refuted by the Declarations of Watkins and Crisp, both of whom denied that Crisp exhibited the behaviors attributed to him by S. Hill. (Watkins Dec. Pars. 45-46; Crisp Dec. Par. 3) Critically, within days of his demotion, Crisp received a performance evaluation signed by S. Hill which characterized his performance as "outstanding." [PSMF 371]

Defendants argue that Watkins was assigned (i.e., demoted to) to the new and "elite" CSU unit because Watkins had the necessary skill set, and because Sheriff Hill wanted to "give him a chance" (Defendants SMF Nos. 66-67) These assertions are laughable. While making this same assertion, Hill admits that he replaced Watkins as Chief Deputy on 1/1/13 for two reasons: (1) Watkins had "expressed a great deal of animosity to towards Sheriff Hill; and (2) "Sheriff Hill was generally familiar with Garland Watkins' management style and felt that Garland Watkins lacked command presence and was very disorganized." (Plaintiffs' Exhibit "141", pp. 4-5) Clearly, one does not assign a person to be the "Commandeer" of a new, "elite" unit who has "lacks command presence" and is "very disorganized."

As for Mitchell, Defendants claim that he was demoted because he "did not demonstrate any interest in getting on board with the new administration." [ECF 68, p. 13] In other words, Mitchell was demoted not because of any objectively verifiable conduct on his part, but instead because of , like Crisp, his "attitude". The problem with this assertion is that Mitchell did in fact attempt to interact with S. Hill, but was rebuffed by S. Hill when he did so, when S. Hill refused to engage in conversation with Mitchell. (Mitchell, 64-65) And, as with Crisp, within days of being demoted, Mitchell received an "excellent" performance evaluation. [PSMF 372]

Defendants have not argued that Plaintiffs' evidence would not support a finding of pretext. Should they do so at trial, Plaintiffs will respond with the Tsunami of evidence at their disposal. In sum, Plaintiffs have adduced more than sufficient evidence from which a jury could conclude that the adverse actions of which they claim were the product of retaliation. Defendants' suggestion to the contrary should be rejected.

B Plaintiffs' Free Speech Claims

Sheriff Hill incorrectly characterizes Plaintiffs' free ***speech*** claims as "Political Patronage Claims". See, ECF 1, Par. 59 (alleging retaliation based on "protected speech") Proceeding from this incorrect premise, Sheriff Hill argues that

Plaintiffs' free speech claims should be dismissed because Georgia Sheriffs should be free to fire their employees based on "political loyalty" grounds. [ECF 68, p. 19] Apart from the implicit "I did it for legitimate reasons" argument, Hill offers no other attack on the First Amendment claims.

Stough v. Gallagher, 967 F.2d 1253 (11th Cir. 1992) forecloses Hill's arguments regarding "political loyalty." In Stough, the Plaintiff supported the newly elected Sheriff's rival candidate. During the campaign, the Plaintiff made statements, as here, reflecting why the rival candidate was better qualified to be Sheriff. Importantly, employees of the Sheriff's office were protected by policies which disavowed "political loyalty" as a legitimate consideration. The Eleventh Circuit held that the Plaintiffs' demotion after the election of the new Sheriff constituted a violation of clearly established law. The same result should obtain in this case.

C Qualified Immunity

Hill argues that qualified immunity insulates him from liability. [ECF 68, pp. 26-29] Once again, Hill overreaches. The decision in Stough, however, forecloses his argument in this respect. In this regard, the Court found that a policy eschewing personal/political "loyalty" to be dispositive of the issue. The same outcome should obtain in this case.

D Georgia Whistleblower Claim

Hill's argument regarding Plaintiffs' O.C.G.A. §45-1-4 claims are addressed in a total of 3 sentences, and explicitly relies on the mistaken contention that Plaintiffs have not adduced sufficient evidence of unlawful motive. [ECF 68, p. 18] Hill has plainly not satisfied his summary judgment burden to demonstrate the alleged lack of evidence or any other basis which would compel judgment in his favor. Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1115-16 (11th Cir.1993) For the reasons addressed above, this assertion is simply incorrect.

E Constructive Discharge

Hill argues that Plaintiffs were not constructively discharged, but offers no citations to the record which would contradict their claims that Hill's conduct, analyzed under a totality of the circumstances review, would justify the conclusion that they left their CCSO employment due to actions taken by Hill that would warrant a reasonable person to conclude that their "working conditions were so intolerable" that there was no real alternative but to resign. As such, Hill's argument is inadequately supported, and should be rejected. See, Garner v. Wal-Mart, 807 F.2d 1536 (11th Cir. 1987) (constructive discharge claim fails where Plaintiff resign one day after demotion).

V Conclusion

A jury could easily conclude that Plaintiffs' protected activities were a motivating factor underlying Victor Hill's actions taken against them. Accordingly, Defendants' motion for summary judgment should be denied, and this matter set down for trial

Respectfully submitted this 12th day of May, 2015.

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Certificate of Service

I hereby certify that on this day I served a copy of this Plaintiffs' Brief IN Opposition To Defendants' Motion For Summary Judgment with the Clerk of Court using the CM/ECF system, which will automatically deliver a copy of same to the following counsel of record:

William J. Atkins

This 12th day of May, 2015.

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